IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA S. CONROY,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 00-CV-3528
	:	
TOWNSHIP OF LOWER MERION and, LOWER MERION TOWNSHIP WORKERS ASSOCIATION,	:	
	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. August 7, 2001

Currently before the Court is a motion for partial summary judgment on behalf of Patricia Conroy ("Plaintiff") and a cross-motion for summary judgment on behalf of Township of Lower Merion ("Defendant"). The Court will grant Defendant's cross-motion and will dismiss Count IV of Plaintiff's complaint.

I. BACKGROUND

This suit began when Plaintiff, an employee of Defendant, experienced aggravation of a chronic back problem and sought a leave of absence under the FMLA. Defendant granted Plaintiff leave. Approximately two months later, Plaintiff notified Defendant of her desire to return to work. Plaintiff submitted a certification from her treating physician who wrote, "It is my professional opinion that Patricia may return to work. As noted previously, she

should avoid drafts and stressful working conditions...." Pl. Ex. C-14. Finding this note unclear and confusing, Defendant informed Plaintiff that she would need to be evaluated by an independent medical examiner in order to ascertain her fitness to return to work. Plaintiff refused to comply and was not permitted to resume her employment. Ultimately, Plaintiff was terminated and she filed this suit.

II. LEGAL STANDARD

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See United States v. Diebold, 369 U.S. 654, 655 (1962). Therefore, it is plain that "Rule 56(c)" mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In such a situation, "[t]he moving party is 'entitled to a judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of

her case with respect to which she has the burden of proof." Id. at 323 (quoting Fed. R. Civ. P. 56(c)).

III. DISCUSSION

As the parties agree that there are no material facts in dispute, the issue for summary judgment is whether Defendant violated the Family Medical Leave Act ("FMLA") when it conditioned Plaintiff's return to work on her obtaining an independent medical examination ("IME"). Plaintiff argues that the FMLA guaranteed her the right to return to work as long as her physician provided certification that she was fit to resume her employment. Defendant counters, arguing that Plaintiff's medical certification was unclear and confusing, and as the FMLA permits employers to develop procedures for restoring employees after absence, it did not act improperly when it invoked its own practices to handle this situation. Defendant also explains that the collective bargaining agreement ("CBA") between Defendant and Plaintiff's union supersedes the FMLA's procedures on the condition that the CBA procedures do not compromise the substantive rights guaranteed by FMLA.

The statutory provisions and the accompanying regulations that make up the FMLA are explicit in their discussion of the certification and return procedures for an employee who has taken leave. They permit an employer to require certification from an employee's physician stating that an employee is able to resume her work responsibilities. See Family and Medical Leave Act, 29 U.S.C. § 2614(a)(4) (2001); see also 29 C.F.R. § 825.310(a) (1993). Where clarification of this certification is necessary, employers are directed to consult the

employee's physician rather than to seek an additional examination. See 29 C.F.R. § 825.310(c).[1]

Despite the existence of these provisions, the FMLA allows a CBA to establish its own procedures for an employee's return to work and these procedures can supersede those of the FMLA. See 29 U.S.C. § 2614(a)(4). The Supreme Court has held that when interpreting a CBA, a court may consider the parties' past practices as implied terms of the CBA. See Conrail v. Railway Labor Executives Ass'n, 491 U.S. 299, 311-12 (1989). Accordingly, Defendant incorporated its own past practices into the CBA and developed procedures as permitted under the FMLA. Defendant consistently applied the same IME procedure utilized in this case in the twenty-six prior situations where an employee's medical certification was unclear or confusing. For these reasons, the Court will treat Defendant's past practices an implied condition of the CBA.[2]

Finally, the Court must determine whether these past practices compromise the protections afforded to Plaintiff under the FMLA, because where a provision of the CBA is more restrictive than that of the FMLA, the FMLA will supersede the CBA. See McKiernan v. Smith-Edward-Dunlap Co., 1995 Dist. LEXIS 6822, at *12 (E.D. Pa. May 17, 1995) (citing 29 U.S.C. §

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[1] Plaintiff references a proposed regulation which the Department of Labor declined to adopt that would enable employers to obtain additional medical opinions in a fitness-for-duty certification. Plaintiff argues that this decision means the proposed procedure conflicted with the FMLA's statutory guarantees. The Court disagrees. The Department of Labor's reasons for declining to formalize the practice do not contemplate Plaintiff's argument and they do not even suggest disapproval of the practice. See Wage and Hour Division, 60 Fed. Reg. 2180, 2226 (Jan. 6, 1995).

[2] Plaintiff argues that the existence of an integration clause in the CBA precludes treatment of Defendant's past practices as implied terms of the agreement. However, as an integration clause is not necessarily dispositive where interpreting union contracts, the Court believes it is appropriate to consider Defendant's past practices in this case. See County of Allegheny v. Allegheny County Prison Employees Indep. Union, 381 A.2d 849, 855 (Pa. 1977).

2652(b)). Therefore, the question remains whether a practice that requires Plaintiff to submit to an IME where her medical certification is unclear, diminishes the protection of the FMLA.

The Court finds that this practice does not interfere with the rights guaranteed by the FMLA. The FMLA simply entitles an employee to resume her employment. See 29 U.S.C. § 2614. It does not, however, ensure a particular administrative procedure for returning to work. Therefore, as Defendant is merely implementing a policy for handling situations where a certification is unclear, these practices do not restrict or even affect Plaintiff's rights under the FMLA. Even though requiring an IME creates an additional step for Plaintiff, Defendant covers the cost of the IME and this practice does not alter the standard for Plaintiff's eligibility or make it more difficult for Plaintiff to be deemed qualified to return. For these reasons, the Court finds that Defendant's use of past practices in this situation does not constitute a violation of the FMLA.

IV. CONCLUSION

For the foregoing reasons, the Court denies Plaintiff's motion for partial summary judgment and grants Defendant's cross-motion for partial summary judgment. Judgment is ordered for Defendant with respect to Count IV of Plaintiff's complaint.

An appropriate order follows.

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TOWNSHIP OF LOWER MERION and, LOWER MERION TOWNSHIP WORKERS ASSOCIATION,	:	
	:	
Defendants.	:	

O R D E R

AND NOW, this 7th day of August, 2001, upon consideration of Plaintiff's Motion for Partial Summary Judgment (Docket No. 13), Defendant Township of Lower Merion's Response to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment (Docket No. 14), Plaintiff's Answer to Lower Merion Township's Cross Motion [sic] for Summary Judgment (Docket No. 16), Defendant's Reply (Docket No. 20) and Plaintiff's Surreply Brief to Lower Merion Township's Cross Motion for Summary Judgment (Docket No. 24), it is hereby **ORDERED** that Plaintiff's motion for partial summary judgment is **DENIED** and Defendant's motion for partial summary judgment is **GRANTED**. Accordingly, Count IV of Plaintiff's complaint is dismissed with prejudice.

BY THE COURT:

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RONALD L. BUCKWALTER, J.